

**STATE OF NEW JERSEY  
DEPARTMENT OF EDUCATION**

In the Matter of Tenure Charges Against  
Veronica Odiase

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**State Operated School District of  
The City of Newark, in the County of Essex**

Agency Dkt. No.

**240-10/17**

Petitioner

**Opinion  
and  
Award**

- and -

**Veronica Odiase**

Respondent

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Before: Deborah M. Gaines, Arbitrator

APPEARANCES:

FOR THE PETITIONER:  
PURCELL, MULCAHY & FLANAGAN, LLC  
By: Michelle M. Schott, Esq.

FOR THE RESPONDENT:  
Stuart S. Ball, LLC:  
By: Stuart S. Ball, Esq.  
Andrea L. Maddan, Esq.

Pursuant to NJSA 18A:6-16, as amended by P.L. 2012, c.26 ("TEACHNJ"), the tenure charges brought by the State-Operated School District of the City of Newark ("the District" or "Petitioner") against Veronica Odiase ("Odiase" or "Respondent") were referred to me by the Bureau of Controversies and Disputes for a hearing and Decision on October 12, 2017. I conducted

hearings in Nutley, New Jersey, on January 30, 2018, March 14, 2018, May 3, 2018 and May 9, 2018.

The parties had full and fair opportunity to examine and cross-examine witnesses, introduce documentary evidence and make argument in support of their respective positions. The hearings were transcribed. The parties submitted written closing arguments which were received on August 10, 2018, whereupon the record was closed. All arguments, whether referenced or not, have been fully considered in this Opinion and Award.

#### THE CHARGES

The Sworn Tenure Charges brought against Veronica Odiase on August 24, 2017, are as follows:

#### CHARGE - INEFFICIENCY

2016-2017

1. Respondent is a special education teacher at the Thirteenth Avenue School who taught a 3<sup>rd</sup> and 4<sup>th</sup> grade class of autistic students in the 2016-2017 school year.
2. Respondent signed her Corrective Action Plan ("CAP") for the 2016-2017 school year on October 27, 2017.
3. Respondent is rated "Ineffective" overall in her 2016-2017 Mid-Year Review for which a conference was held on February 13, 2017.
4. Respondent is rated "Ineffective" overall in her 2016-2017 Annual Teacher Evaluation by Vice-Principal Matthew Kessler dated May 11, 2017.
5. Respondent is rated "Partially Effective" overall in her 2016-2017 Formal Observation by Vice-Principal Matthew Kessler that took place on November 21, 2016.
6. Respondent is rated "Partially Effective" overall in her 2016-2017 Formal Observation by Simone Rose that took place on December 20, 2016.

7. Respondent is rated "Partially Effective" overall in her 2016-2017 Formal Observation by Vice-Principal Matthew Kessler that took place on May 9, 2017.
8. Vice-Principal Matthew Kessler sent emails to Respondent in the 2016-2017 school year regarding informal observations, coaching, Respondent's CAP and IPDP, lesson plans and Respondent's APA/DLM scores and a parental complaint.
9. Professional Development meetings were provided for teachers in 2016-2017 school year.

#### 2015-2016 School Year

10. Respondent signed her Individualized Professional Development Plan for the 2015-2016 school year on October 29, 2015.
11. Respondent is rated "Ineffective" overall in her 2015-2016 Mid-Year Review for which a conference was held on February 9, 2016.
12. Respondent is rated "Ineffective" overall in her 2015-2016 Annual teacher Evaluation by Vice-Principal Matthew Kessler that took place on May 12, 2016.
13. Respondent is rated "Partially Effective" in her 2015-2016 Long Observation by Vice-Principal Matthew Kessler that took place on October 9, 2015.
14. Respondent is rated "Partially Effective" in her 2015-2016 Short Observation by Simone Rose that took place on February 5, 2016.
15. Respondent is rated "Partially Effective" overall in in her 2015-2016 Long Observation by Vice-Principal Matthew Kessler that took place on April 26, 2016.
16. Respondent is rated "Partially Effective" overall in her 2015-2016 Long Observation by Vice-Principal Matthew Kessler that took place on May 6, 2016.
17. SIP Meetings took place during the 2015-2016 school year.
18. Respondent was coached during the 2015-2016 school year.
19. Professional Development Staff meetings took place regularly throughout the 2015-2016 school year.

#### 2014-2015 School Year

20. Respondent signed her 2014-2015 Corrective Action Plan on October 14, 2014.
21. Respondent is rated "Partially Effective" overall in her 2014-2015 Mid-Year Review for which a conference was held on February 23, 2015.

22. Respondent is rated "Partially Effective" in her 2014-2015 Short Observation by Viveca Williams that took place on September 23, 2014.
23. Respondent is rated "Partially Effective" in her 2014-2015 Long Observation by Viveca Williams that took place on February 16, 2015.
24. Respondent is rated "

Respondent has failed to improve in the areas identified as problematic in her observations and evaluations.

Respondent has failed to develop skills, including but not limited to the following: tailor instruction; employ multiple strategies for her special needs class; establish routines or methods for feedback from students to monitor progress or improve pacing; and failure to improve her responsiveness to students.

#### BACKGROUND

Notice of Tenure Charges of Inefficiency were served upon Respondent, Veronica Odiase, a tenured teacher pursuant to N.J.S.A. 18A:6-11 on or about August 26, 2017. The Charges were certified by the District and referred to arbitration.

Respondent moved to dismiss the charges prior to the calling of any witnesses. It argued Respondent's evaluations were fatally flawed and could not legally form the basis of the instant charges. Respondent also argued that Respondent's 2014-2015 evaluation was specifically invalid because Respondent was teaching outside her certification that year. The undersigned denied the motion without prejudice determining that factual issues of whether the District substantially complied with the

evaluation process and if not, whether that fact materially affected the outcome of the evaluation existed.

Although the District presented evidence for all three school years charged, in its written closing argument, it informed the undersigned it was relying only upon the charges relating to the 2015-2016 and 2016-2017 school years. Thus, the charges dealing with the 2014-2015 school year are dismissed.

### **Positions of the Parties**

#### **Position of the District**

The District argues it has proven the charges against Respondent. It maintains the record evidence demonstrates Ms. Odiase was rated Ineffective for two consecutive school years, which under the statute supports removal from her position.

The District argues the undersigned is precluded by statute from evaluating the quality of Respondent's teaching. Rather, arbitral review is limited to whether:

1. The employee's evaluation failed to adhere substantially to the evaluation process, including, but not limited to providing a corrective action plan;
2. There is a mistake of fact in the evaluation;
3. The charges would not have been brought but for the consideration of political affiliation, nepotism, union activity, discrimination as prohibited by State or federal law, or other conduct prohibited by State or federal law; or
4. The district's actions were arbitrary or capricious.

The District notes that if any of the above deficiencies are found, the arbitrator must determine if any of those facts materially affected the outcome of the evaluation.

In the instant matter, the District maintains it has demonstrated compliance with all statutory requirements.

2015-2016 School Year

According to the District, the credible record evidence shows Respondent's Individual Professional Development Plan (IPDP) was in place by the deadline of October 31, 2015. It maintains the IPDP properly referenced student goals with assessment metrics and goals for student growth (SGO).

The District maintains Respondents' arguments that the SGOs failed to meet the statutory requirements is belied by the evidence, which shows Respondent drafted the goals and signed them. It argues the record evidence demonstrates teachers are responsible for initiating the first draft and they are the only persons who can access CAP or IPDP SGOs in the computer system. It maintains there is no evidence Respondent ever objected to any of the stated goals in her IPDP.

The District contends the goals set forth in the IPDP were statutorily sufficient, as they contained methods of initial assessment, pretest results for her six students and methods for assessing their progress.

With respect to the observation process, the District argues it exceeded the statutory requirements for the number of observations provided to Respondent. It notes Respondent was observed on four occasions (October 9, 2015, February 5, 2016, April 26, 2016 and May 5, 2016) during the school year. It maintains only three were required for teachers on an IPDP.

The District argues the observations were performed in accordance with the statutory requirements and the state approved framework for assessment. It avers the observation contained specific directions for improvement. As to scoring, it maintains the framework provides general indicators and key questions as well as the numeric values associated with each evaluative competency.

Likewise, the District asserts the observations complied with the requirements for pre-and post observations. It cites Vice Principal Kessler's testimony that he recalled having one pre-observation meeting and that it is not his practice to sign any documents for this purpose. The District maintains Respondent was also provided opportunities for development through Professional Development meetings, as well.

Finally, it argues the mid-year and annual summative evaluations also comport with the requirements of TEACHNJ. The District maintains any failure to assess student growth objectives was due to Respondent's failure to provide data to

support them. It contends the iReady reports were not supplied until months after the date for the annual rating in June.

2016-2017 School Year

The District argues Respondent's rating for the 2-16-2107 school year also complied with all the procedural requirements of TEACHNJ. According to the District, Respondent received a CAP for the 2016-2017 school year, because she was rated Ineffective the prior year.

According to the Department the record evidence demonstrates the CAP was established collaboratively between VP Kessler and Respondent. It cites not only VP Kessler's testimony but also argues the emails sent between them show the work put into its development. The Department argues the SGOs were specific to Respondent's six students and contained assessments of their starting point for the school year.

The Department argues the observations were performed in accordance with all procedural requirements. It argues Respondent received three observations performed by two different evaluators, and all had the required number of pre- and post- observations.

The Department asserts the observations also contain all required CAP observations. It cites the language that the teacher is supposed to make her own reflection and points to



fact that the evaluations contain evaluations citing evidence of how Respondent either did or did not meet expectations.

The Department maintains Respondent received appropriate developmental opportunities during the 2016-2017 school year as well. The evidence it cited were observations, VP Kessler's testimony that he coached Respondent during the school year, the identification of areas of improvement in her CAP and observations and staff professional development meetings provided throughout the year.

According to the Department, Respondent's arguments to dismiss the charges have no merit. While it acknowledges, Respondent was provided an IPDP during the 2015-2015 school year rather than a CAP, it maintains Respondent was an experienced teacher and was therefore on notice of her performance issues.

Likewise, it argues the lack of a CAP reflection in her December 2016 review is not a fact that had a material impact on her evaluation. It maintains Respondent's observations contained extensive descriptions of her lessons and various issues and, as a result, was provided clear notice of the specific deficiencies in her performance.

Moreover, to the extent Respondent has "any complaints about the assessment process", it argues Respondent had a reciprocal obligation to take part in its development and providing data to show her progress. It cites the Gonzalez

decision, which deals with the same District, to establish Respondent had a shared responsibility for these objectives and cannot seek to argue there are problems with her SGOs when she failed to provide data for her review.

#### Position of Respondent

Respondent, on the other hand, maintains the Department failed to substantiate the charges against Respondent.<sup>1</sup> It argues that all the deficiencies it cited in its original Motion to Dismiss were amplified by the record evidence submitted prior to and after the arbitration hearing. It contends the District failed to establish the legal pre-requisites to charge Respondent and it repeatedly failed to follow the rules, regulations and procedures for observing Respondent.

First, Respondent argues the Department's failure to establish a CAP for Respondent in the 2015-2016 school year is a fatal flaw. It maintains the statute provides that a CAP is legally required and cannot be replaced by an IPDP. Respondent relies upon Arbitrator Zudick's decision in Maria-Lopes Anastasi in which the Arbitrator granted Respondent's motion to dismiss for failing to establish a CAP. It maintains the instant case presents more compelling circumstances since, in Anastasi, the District realized its error by November and established a CAP

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<sup>1</sup> As the District did not pursue the charges for the 2014-2015 school year, I have not included Respondent's arguments regarding the 2014-2015 school year.

for the Respondent in December of the school year. Here, Respondent argues Respondent was never given the benefit of the more robust CAP and, thus the charges must be dismissed. It notes the Arbitrator Zudick specifically rejected the District's argument that an IPDP was "close enough."

Respondent maintains that all the District's observations for the 2015-216 school year are also procedurally deficient because of the lack of Respondent's CAP. First, it argues the District did not observe Respondent four times, as required for the 2015-2016 school year. It argues the October 9<sup>th</sup> observation cannot be counted since it was provided weeks before even the IPDP was in place. Moreover, it maintains, she did not receive another observation until three months later by an evaluator who had no part in the development of the IPDP. It maintains the observation is not valid, as the evaluator observed a morning meeting, and not an actual lesson. It further notes that all observations in the 2015-2016 school year lacked CAP reflections as the school provided Respondent only with an IPDP.

In addition, Respondent disputes she received any pre-observation meetings in the 2015-2016 school year. It notes none of the observations reflect that such a meeting occurred, nor was VP Kessler's testimony credible. It notes he initially testified she failed to show up for the meeting and then later in his testimony claimed he met with her.

Respondent maintains the District also failed to properly calculate, assess and incorporate SGOs into Respondent's goals and Annual Summative Evaluation. It argues VP Kessler's testimony demonstrates he does not understand how SGOs are measured. It maintains there is no evidence in the record that any of these calculations were performed.

Respondent further disputes the Districts claim that Respondent failed to timely submit data as required. It cited Kessler's testimony that "Odiase would bring in student data" during the year to show progress. It argues that the iReady reports were available to him and demonstrated student growth, yet he did not look at them.

Respondent argues the 2016-2017 CAP failed to meet the statutory requirements as well. Specifically, it maintains the SGOs were not compliant with the statutory requirements to have pre-assessments, multiple measures of student data. It argues Principal Rose acknowledged the SGOs were not measurable.

Finally, Respondent maintains the District should be estopped from bringing any charges since it has repeatedly charged the same school years multiple times. As a result, it requests attorney fees and any other penalties against the District as the undersigned may deem appropriate.

## Decision

After carefully considering the entire record before me, including my assessment of witness credibility and the probative value of evidence, I find the Board has not met its burden under the statute to sustain the charges of inefficiency against Respondent. My reasons follow.

In reviewing the charges, I note the arbitrator's role in proceedings regarding inefficiency is a limited one. The statute prohibits the arbitrator from reviewing the evaluator's qualitative determination of an employee's classroom performance. Instead, the statute provides that in rendering a decision, an arbitrator "shall only consider whether or not"

1. The employee's evaluation failed to adhere substantially to the evaluation process, including, but not limited to providing a corrective action plan;
2. There is a mistake of fact in the evaluation;
3. The charges would not have been brought but for the consideration of political affiliation, nepotism, union activity, discrimination as prohibited by State or federal law, or other conduct prohibited by State or federal law; or
4. The district's actions were arbitrary or capricious.

If the arbitrator finds that none of the above factors were either present or materially affected the outcome of the evaluation, "the arbitrator shall render a decision in favor of the Board and the employee shall be dismissed." N.J.S.A.

C.18A:6-17.2 23.b

Careful review of the record evidence demonstrates the District failed in several areas to substantially adhere to the evaluation process during the 2015-2106 school year. Foremost was the District's failure to implement a CAP for Respondent. The District acknowledges Respondent received an IPDP instead of a CAP in 2015-2016. However, it asserts Respondent was aware already on notice regarding her performance issues since she received a Partially Effective rating for the 2014-2015 school year. [District Exhibit EE] Moreover, it contends Respondent's 2015-2016 IPDP still met the requirements of a CAP.

The District's attempt to place responsibility for failing to implement a CAP upon Respondent has no merit. TEACHNJ defines a CAP, in pertinent part

Corrective Action Plan means a written plan developed by a teaching staff member serving in a supervisory capacity in collaboration with the teaching staff member to address deficiencies as outlined in an evaluation. . .

While the process is collaborative, the statute places primary responsibility on the District. Vice Principal Kessler acknowledged the District's electronic system generates the form for Respondent to begin development of her goals and, in this case, she was provided an IPDP.

Moreover, the implementation of a CAP is not merely to place a teacher on notice that her performance is not sufficient. Rather, it is a means to address specific

deficiencies to enable a teacher to improve. To that end, the regulations provide:

The Corrective Action Plan shall include timelines for corrective action, responsibilities of the individual teaching staff member and the school district for implementing the plan, and specific support that the district shall provide.

The regulations further specify the CAP shall include:

1. Address the areas in need of improvement identified in the education evaluation rubric;
  - 2) include specific, demonstrable goals for improvement,
  - 3) include responsibilities of the evaluated employee and the school district for the plan's implementation and
  - 4) include timelines for meeting the goals.
- N.J.A.C. 6A:10-2.5(e).

Thus, the difference between an IPDP and a CAP is not merely the heading on the form.

Examination of the Respondent's 2015-2016 IPDP shows it does not meet these standards. First, it lacks the specificity of a CAP. With respect to teacher growth, her IPDP includes:

teacher will improve on pacing and momentum so that students will work productively to maximize their learning.  
[District Exhibit T]

Although the section labelled action steps indicates that it should provide the specific strategies the teacher will use to improve and that the administrator will employ to support the teacher, the section reads only:

Teacher will use the time to plan the time to spend on lesson, Teacher will spend appropriate amount of time on

each component of the lesson. Students will be instructed on what to do.

The section describing how the educator's growth in this area is blank. [Id.] Similarly, the second growth area is described as:

teacher's commitment to continuous improvement, teacher collaborate with other teachers, teacher communicate students' progress to families and school leader, teacher attends meetings and teacher attendance is always present.

The action steps are described only as:

Teacher collaborate with other teachers and attend workshops.

This section does not specify any means or method of measurement. Nor does it describe any role for the administrator to provide support. [Id.] While some evidence of professional development was provided, it was not specifically tailored to Respondent, as described in the Framework for Effective Teaching. [District Exhibit UU] Thus, the record evidence does not demonstrate her 2015-2016 IPDP was substantially similar to a CAP.

Vice Principal Kessler testified Respondent was responsible for drafting her goals and that the computer system does not even allow him to edit the goals. While I credit his testimony about the system, the ultimate responsibility for approving the document, including the goals, lies with the supervisor. Thus, if the goals are not sufficient or in compliance with the



requirements of the statute, he has the responsibility not to sign off on them until they are.

The failure to establish a CAP for Respondent impacted all areas of the evaluation process for the 2015-2016 school year. The Framework for Effective Teaching emphasizes the mid-year review as a mechanism to "discuss the teacher's progress toward student and professional goals set at the beginning of the year." [District Exhibit UU, p. 22] To that end, it provides the mid-year review "should review progress toward student learning and teacher professional development goals and refine strategies and plans where needed in order to meet those goals by the end of the year." [ Id. P. 22] Yet, Respondent's mid-year contains no such review. In the sections that ask whether the teacher is on track to meet the goals set is blank. Likewise, all sections relating to CAP, actions steps or adjustment of goals also contain no information. Thus, the mid-year evaluation does not meet the basic standards set by the Framework.

Likewise, the observations relating to the 2015-2016 school year are also deficient to fulfill the CAP requirements. First, teachers on a CAP must have one observation in which a pre-observation conference is held. There is no documentary evidence that such a conference took place. All the observation reports for the 2015-2016 year indicate they were unannounced

observations. VP Kessler's testimony regarding the conference was unpersuasive in this regard. He initially believed Respondent failed to appear for a pre-observation conference and then later testified that one had been held. However, none of the observation forms for the 2015-2016 school year indicate a pre-observation conference was held. [District Exhibits W, X, Y and Z] His testimony that he typically does not sign a form is not compelling. Certainly, given the scope of his responsibilities, one would not expect him to recall in any detail every conference held with a teacher. That is precisely why such meetings are required to be documented on the observation form. The observation for 2015-2016 all indicated they were unannounced and, thus, the sections describing what was discussed in the pre-observation conference were left blank. This stands in contrast to the one announced observation conducted in the 2016-2017 school year. In that observation, the section specifying what type of observation it is indicates it was an announced observation and the sections requiring information about what was discussed during the pre-observation conference were completed. [District Exhibit G] Thus, the lack of any indication that the observations in 2015-2016 were announced, I find insufficient record support to indicate any announced observations occurred.

I find the deficiencies noted above to have had a material impact on Respondent's evaluation for the 2015-2016 school year. As noted above, the record evidence demonstrates multiple deficiencies with respect to the 2015-2016 school year. The lack of a CAP resulted in the lack of a detailed plan to assist the teacher in achieving proficiency and denied her the appropriate areas of reflection in her mid-year CAP and all the observations conducted during the year. These elements are the principal mechanisms designed by the statute to support struggling teachers to achieve proficiency. While the undersigned cannot ascertain how Respondent would have performed had she been given the benefit of a CAP and all the requirements attached to it, I don't believe the statute was designed to require such clairvoyance. Where, as here, the District fails in so many important areas to substantially adhere to the evaluation process, I find it materially impacted the process - that is it deprived her in important ways of receiving the statutory mechanisms to improve. That she failed to achieve an Effective rating in 2016 when she had a CAP is not evidence that it was not material. Thus, the charges for the 2015-2016 school year must be dismissed.

Finally, I do not find sufficient record support for Respondent's argument that the SGO in her 2015-2016 and 2016-2017 IPDP and CAP respectively failed to satisfy the

requirements of the statute. The Union's reliance on the Carroll decision is misplaced. In that case, Arbitrator Simmelkjaer found the SGO's inadequate because no specific measurement identified, nor did the SGOs state an initial assessment of where the students were at the start of the year or provide a specific measurable goal for the end of year. In the instant case, the indicators relied upon and identification of the starting points of the students were identified. In addition, the SGO's included measurable goals for the end of year. I credit VP Kessler's testimony that although the percentage rank for certain students was 0%, there was a means of identifying achievement of 50% by looking at the raw data from the end of year tests.

However, Respondent's contention that the District failed to properly assess the goals in the ASEs is supported by the record evidence. No score is given for student growth, although in her 2015-2016 ASE she was rated, partially effective. Her ASE for the 2015-2016 school year indicates she failed to keep proper data and/or did not provide it. However, the record evidence indicates many measurements such as the iReady reports were available electronically (which is how the Framework indicates such measures must be kept). More importantly, nowhere in the record evidence was the percentage scoring required for the final evaluation. While I credit Kessler that

the school imports information to the District, ultimately the ASE is required to contain this information. Similar failures were noted in the same District in Carroll in which Arbitrator Simmelkjaer found the ASE invalid.

Likewise, in the 2016-2017 school year, Respondent's ASE indicated she partially met the SGOs. [Exhibit G] However, in making that determination, the comments read only:

Ms. Odiase has made some progress this year with the goals that were created from the students IEPs. Ms. Odiase has work samples in her binder that show some of this growth.

However, her CAP specifically references metrics and no reference to these metrics were made in the ASE. Thus, I find the ASE invalid in this regard.

Based upon the foregoing, I issue the following

AWARD

1. For the above stated reasons, the District failed to substantially adhere to the evaluation process which materially affected the outcome of her evaluations for the 2015-2016 and 2016-2017 school year.
2. Pursuant to TEACHNJ, Respondent shall be reinstated to her position as a teacher with the State-Operated School District of the City of Newark.
3. Respondent shall receive back pay from the date of her suspension without pay until the date of her reinstatement. She shall also receive commensurate benefits (medical, pension credits and contributions) retroactive to the date of the certification of the charges.
4. The undersigned shall retain jurisdiction for a period of three months for the limited purpose to address any issues with the implementation of this AWARD.

Signed:

*Deborah Gaines*

Dated: September 6, 2018

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Deborah Gaines, Arbitrator

Affirmation

State of New York }  
County of New York } ss:

I, DEBORAH GAINES, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my award.

Date: September 6, 2018

*Deborah Gaines*

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